

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____
Telephone Number: _____

Refer Reply To:
CC:PSI:B04 – PLR-105239-12
Date: JULY 19, 2012

RE:

Legend:

Taxpayer =
X =
Trust =
Country =
Company 1 =
Company 2 =

Dear _____ :

This letter responds to your authorized representative's letter, dated February 2, 2012, requesting a ruling on the application of § 671 and § 1014 of the Internal Revenue Code.

Facts

The facts submitted and representations made are as follows:

Taxpayer, a citizen and resident of Country, proposes to transfer assets to Trust, an irrevocable trust subject to the laws of Country. The assets of Trust include cash and stock in Company 1 and Company 2 that are publicly traded in Country and on the New York Stock Exchange. Taxpayer and X, an unrelated party, are Trustees.

Under the terms of Trust, Trustees are to pay all of the income of Trust to Taxpayer during his lifetime and may, in Trustees' absolute discretion, pay principal of Trust to Taxpayer. Article IV. Upon the death of Taxpayer, any income of Trust and any corpus remaining in Trust are to be paid or transferred to or in trust for one or more of Taxpayer's issue in such proportions as Taxpayer may appoint by deed or will. In default of appointment, corpus and accumulated income will be held in further trust for the benefit of Taxpayer's issue. Article V. Trust further provides that during Taxpayer's lifetime no adverse party within the meaning of § 672(a) is eligible to serve as Trustee. Article XI.

You have requested the following rulings:

1. Following the death of Taxpayer, the basis of the property held in Trust at Taxpayer's death will be the fair market value of the property at the date of Taxpayer's death under § 1014(a).
2. Taxpayer will be treated as the owner of Trust for purposes of § 671, such that the items of income, deductions and credits against tax of Trust will be included in computing Grantor's taxable income and credits against tax.

ISSUE 1:

Section 1014(a)(1) provides that the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death.

Section 1014(b)(1) provides that property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent shall be considered to have been acquired from or to have passed from the decedent for purposes of § 1014(a).

Section 1014(b)(9) provides that, in the case of a decedent dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate, shall be considered to have been acquired from or to have passed from the decedent for purposes of § 1014(a).

Section 1014(b)(9)(C) provides that § 1014(b)(9) shall not apply to property described in any other paragraph of § 1014(b).

Section 1.1014-2(b)(2) of the Income Tax Regulations provides, in part, that § 1014(b)(9) property does not include property that is not includible in the decedent's gross estate, such as property not situated in the United States acquired from a nonresident who is not a citizen of the United States.

In this case, Taxpayer's issue will acquire, by bequest, devise, or inheritance, assets from Trust at Taxpayer's death. The assets acquired from Trust are within the description of property acquired from a decedent under § 1014(b)(1). Therefore, Trust will receive a step-up in basis in Trust assets under § 1014(a) determined by the fair market value of the property on the date of Taxpayer's death. See Rev. Rul. 84-139, 1984-2 C.B. 168 (holding that foreign real property that is inherited by a U.S. citizen from a nonresident alien will receive a step-up in basis under § 1014(a)(1) and 1014(b)(1)). This rule applies to property located outside the United States, as well as to property located inside the United States.

Accordingly, based solely upon the information submitted and the representations made, we conclude that following the death of Taxpayer, the basis of the property held in Trust will be the fair market value of the property at the date of Taxpayer's death under § 1014(a).

ISSUE 2:

Section 671 provides, in part, that where it is specified in subpart E of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual.

Section 672(f)(1) and § 1.672(f)-1 provide that, as a general rule, the grantor trust rules (§§ 671 through 679) apply only to the extent such application results in an amount (if any) being taken into account (directly or through one or more entities) in computing the income of a citizen or resident of the United States or a domestic corporation. Section 672(f)(2)(A)(ii) and § 1.672(f)-3(b)(1) provide that the general rule does not apply to any portion of a trust if the only amounts distributable from such portion (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

Section 677(a)(1) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or in the discretion of

the grantor or a nonadverse party, or both, may be distributed to the grantor or the grantor's spouse.

Under the terms of Trust, the trustees are required to pay all Trust income to Taxpayer during his lifetime and the trustees are authorized to pay, in their absolute discretion, any amounts out of the capital of Trust to Taxpayer. In addition, the only distributions that Trust may make during the Taxpayer's lifetime are to Taxpayer. Thus, § 672(f) will not prevent Taxpayer from being treated as the owner of Trust. Therefore, Taxpayer will be treated as the owner of Trust under § 677(a).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the proposed transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special
Industries)

Enclosure

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